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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 240 50535 Office: VERMONT SERVICE CENTER Date: AUG 22 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel relies on the petitioner's citation history and a nonprecedent decision by this office. Each petition is decided on a case-by-case basis after a review of all of the evidence as a whole. A nonprecedent decision is not binding on us. The petitioner also submits evidence of accomplishments after the date of filing. A petitioner must demonstrate his eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak;* 14 I&N Dec. 45, 49 (Comm. 1971). Thus, the evidence of the petitioner's accomplishments after that date is irrelevant to this adjudication. We will discuss the remaining evidence of record below.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in biochemistry and molecular biology from Baylor College of Medicine. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its

report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, molecular research, and that the proposed benefits of his work, improved understanding of cellular signaling, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The director noted that the petitioner's thesis advisor was a coauthor of the petitioner's published articles and concluded that the record lacked evidence of the extent of the petitioner's contributions to that work. The director acknowledged that the petitioner's references were "experts" in the petitioner's field, but concluded that the record did not establish the petitioner's "substantial impact in his field of endeavor." The director further concluded that the petitioner's citation record was insufficient evidence "of his claimed accomplishments in the field."

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of

achievement with "some degree of influence on the field as a whole." *Id.* at 219, n. 6. "Some degree of influence" would appear to be a lesser standard than the "substantial impact" standard used by the director. That said, we emphasize even an alien demonstrating "some degree of influence on the field as a whole" would need to demonstrate an influence beyond his own immediate circle of colleagues.

At Baylor College, the petitioner worked in the laboratory of Dr. [redacted] Scientific Chair of the Visual Sciences C study section where he reviews grant proposals for the National Institute of Health. Dr. [redacted] also spent three years reviewing grant proposals on the Sensory Systems Panel for the National Science Foundation. Finally, Dr. [redacted] has reviewed manuscripts for *Science, Nature* and the *Proceedings of the National Academy of Sciences*.

Upon graduation from Baylor, a member of the petitioner's thesis review committee, Dr. [redacted] currently the [redacted] Professor of Genetics at Harvard Medical School and an investigator at the Howard Hughes Medical Institute, recruited the petitioner to follow him to Harvard, where the petitioner now works. Dr. [redacted] is a member of the National Academy of Sciences and a recipient of the Genetics Society of America Medal. Not every researcher who works in the laboratory of a member of the National Academy of Sciences is presumed to be eligible for a waiver of the job offer requirement in the national interest and we will not infer the petitioner's influence from that of his supervisor. Nevertheless, we accord significant weight to the opinions of academy members.

Dr. [redacted] explains that the petitioner "on his own" discovered and characterized a previously unknown protein important for vision, named R9AP by Dr. [redacted] laboratory. Dr. [redacted] continues:

> He discovered this new protein, and the gene encoding it, in the course of his studies of mechanisms of signal transduction in vision. Specifically, he studied the functional regulation of a key protein, RGS9, in the recovery of light responses in photoreceptors in the retina. A number of researchers in my laboratory and several others around the world had worked very hard for over ten years to investigate the molecular mechanism governing the recovery of light responses of rod cells in the retina. [The petitioner's] research and discovery contributed significantly to our understanding of this process by a combination of ingenuity, excellent skills in molecular biology, and hard work.

Dr. Wensel is the only other author for the petitioner's article reporting the discovery of this protein in the *Proceedings of the National Academy of Sciences*. Dr. [redacted] further explains that the petitioner designed a "novel protocol" to obtain recombinant native R9AP despite previous difficulties in the field expressing purifying and reconstituting functional mammalian transmembrane proteins (such as R9AP) from bacteria. Dr. [redacted] asserts that he and the petitioner "have been approached for collaborative work on [the petitioner's] discovery by laboratories at Harvard, University of Washington, University of Utah, and several other universities in the U.S." In support of this statement, we note that some of the petitioner's articles are coauthored with Dr. [redacted], a professor at the University of Washington. In addition, the petitioner submitted a letter from Dr. [redacted] an assistant professor at the University of Utah, asserting that the petitioner's "breakthrough" work with RGS9-1 "sparks and sustains our frequent discussion on our projects" and that he and the petitioner "share unpublished results and exchanged research reagents freely."

Dr. [redacted] vides similar information, asserting that the petitioner's contributions to the field are "cutting-edge." Dr. [redacted] concludes that this work won the petitioner several job offers and expresses his appreciation that the petitioner chose to work with Dr. [redacted] On appeal, Dr. [redacted] is more emphatic, asserting that the petitioner's work exceeds his professional peers and is "of great national significance." Noting the petitioner's citation record, Dr. [redacted] continues that the petitioner's "enormous contributions" have been "widely recognized."

On appeal, counsel's characterization of the petitioner's citation record (34 citations) includes self-citations and articles published after the date of filing. That said, the documentation submitted on appeal reflects that one of the petitioner's articles had been cited 12 times by independent researchers as of the date of filing and a second article had been cited by four independent researchers as of the date of filing.

While the seven independent citations for a third article and continuing citations of the previous two articles, all after the date of filing, are not direct evidence of the petitioner's eligibility as of the date of filing, they suggest that the petitioner's work continues to be influential.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the molecular research community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.